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In re Application of VANDERBIST et al.

Application No.: 09/424,247

PCT No.: PCT/BE98/00064

Int. Filing Date: 07 May 1998

Priority Date: 07 May 1997

Attorney Docket No.: 4068-0002-0 PCT

For: DRY POWDER INHALER EXCIPIENT,

PROCESS FOR ITS PREPARATION AND

PHARMACEUTICAL COMPOSITIONS CONTAINING IT

DECISION ON

RENEWED PETITION

UNDER 37 CFR §1.47(a)

This is a decision on applicants' "Renewed Petition under 37 CFR 1.47(a)" originally filed 23 January 2002 in the United States Patent and Trademark Office (USPTO) in the above-captioned application, a copy of which was filed via facsimile on 07 May 2002. The renewed petition was accompanied by a "Request for Extension of Time" of two months, which is granted.

On 25 September 2001, a decision on applicant's petition under 37 CFR 1.47(a) was mailed to applicant indicating that the requirements of 37 CFR 1.47(a) had not been met and thus, the declaration could not be accepted without the signature of applicant/inventor Paul Maes.

On 07 May 2002, applicants submitted the instant communication with a copy of the USPTO itemized postcard receipt date-stamped "Jan 23 2002" indicating that a renewed petition under 37 CFR 1.47(a) and a declaration signed by applicant/inventor Paul Maes were filed on 23 January 2002 along with a request for a two month extension of time.

**DISCUSSION**

A review of the USPTO date-stamped, itemized postcard receipt indicates that the declaration for 09/424,247 was deposited with the USPTO on 23 January 2002. A review of the finance records for 09/424,247 indicates that the fee for a two month extension of time was paid on 23 January 2002.

The evidence submitted, which includes a copy of a postcard receipt with a USPTO mailroom stamped date of 23 January 2002 itemizing a "Combined Declaration, Petition and Power of Attorney" for "09/424,247", is sufficient to establish that the declaration for this application was received in the USPTO on 23 January 2002. The communication filed 07 May 2002 includes a copy of the declaration. Accordingly, it is appropriate to accept the copy of the

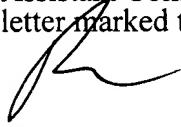
declaration as a replacement for the missing original declaration with a deposit date of 23 January 2002. Applicant's communication is considered responsive to an Office decision mailed on 25 September 2001.

A review of the declaration submitted on 23 January 2002 indicates that a declaration is executed by inventor Paul Maes only, who was previously alleged to be uncooperative. However, on page 4 of the declaration, a line has been drawn through the box dedicated to the third named inventor, Phillippe Baudier. This page has been initialed at the bottom. With this marking on the declaration, the declaration does not identify all the inventors as listed on the international application. Therefore, it does not comply with 37 CFR 1.497 and is unacceptable.

What is required is a new declaration executed by Paul Maes, which identifies all the inventors as listed on the international application or in the alternative, a renewed petition under 37 CFR 1.47(a). The renewed petition must include the last known address of the inventor Paul Maes and evidence of Mr. Maes' refusal to sign a declaration which identifies the inventors as listed on the international application.

Applicant has **TWO** (2) months within which to file a response. Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, DC 20231, with the contents of the letter marked to the attention of the PCT Legal Office.



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